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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,162	11/10/2000	Richard M. Onyon	FUSI-00000	4588
28554	7590	10/28/2008	EXAMINER	
Vierra Magen Marcus & DeNiro LLP 575 Market Street, Suite 2500 San Francisco, CA 94105			PATEL, HARESH N	
ART UNIT	PAPER NUMBER			
	2454			
MAIL DATE		DELIVERY MODE		
10/28/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/710,162	ONYON ET AL.
	Examiner	Art Unit
	HARESH N. PATEL	2454

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 July 2008.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4,6-10,27-29,31 and 38 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4,6-10,27-29,31 and 38 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \*    c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>8/4/08, 7/18/08</u>	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

1. Claims 1-4, 6-10, 27-29, 31 and 38 are subject to examination. Claims 5, 11-26, 30 and 32-37 are cancelled.

***Double Patenting***

2. Applicant's remark, in the event that this obviousness-type double patenting rejection is the sole remaining rejection, applicants would consider anew whether to file a terminal disclaimer, regarding the double patenting rejection, office action dated 3/19/2007, is noted.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 6-10, 27-29, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta et al., 7,051,275, Microsoft (Hereinafter Gupta-Microsoft) in view of "Official Notice", as per office action dated 3/17/2008.

5. Claims 4 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta-Microsoft and "Official Notice" in view of Ohlenbusch et al., 2002/0091785 (Hereinafter Ohlenbusch), as per office action dated 3/17/2008.

6. Claims 1-3, 6-10, 27-29, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al., 2002/0049852, Microsoft (Hereinafter Lee) in view of “Official Notice”, as per office action dated 3/17/2008.

7. Claims 4 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee and “Official Notice” in view of Ohlenbusch et al., 2002/0091785 (Hereinafter Ohlenbusch), as per office action dated 3/17/2008.

***Response to Arguments***

8. Applicant's arguments filed 7/18/2008, pages 1-9, have been fully considered but they are not persuasive. Therefore, rejection of the rejected claims is maintained.

Regarding the applicant's concern regarding the claimed subject matter of claims 1 and 27, i.e., Gupta teaches annotations for multiple versions of media content. Multiple different versions of the same multimedia content are available to a multimedia server, and an annotation server maintains annotations corresponding to the multimedia content, each annotation corresponding to each of the different versions of the multimedia content. [Gupta, Abstract] The video streams can differ in a variety of manners such as quality, modified timelines, and speed factors. [Gupta, col. 7, lines 53-64]; The first paragraph of Gupta, col. 4, teaches the annotation server and how it communicates such as via HTTP or SMTP. The second paragraph of Gupta, col. 4, teaches annotations which are able to correspond to streaming or pre-delivered media. The third paragraph of Gupta, col. 4, teaches the process of a user accessing a page containing streaming media and how the browser contacts the annotation server. The fourth paragraph of Gupta, col. 4, teaches general computer information. The fifth paragraph of Gupta, col. 4,

teaches a general example of a computer. The sixth paragraph of Gupta, col. 4, teaches a computer with internal components such as a processor and memory. The seventh paragraph of Gupta, col. 4, which is only a partial paragraph that continues on to col. 5, teaches more specifics about a computer such as describing the memory in more detail, etc.; the examiner respectfully disagrees. The relied upon disclosure and the teachings of the Gupta are not limited as concluded by the applicant. Gupta discloses the broadly claimed limitations of the applicant concerned claims 1 and 27, i.e., please see the cited portions among other places of the cited art that not only contain the applicant concerned content of the art but also the relied upon limitations. The specification of the application under prosecution at page 32, states, The many features and advantages of the present invention will be apparent to one of average skill in the art. All such features and advantages are intended to be within the scope of the invention as defined by the above specification and the following claims. Further, when reviewing a reference the applicants should remember that not only the specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. **In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968)** and **In re Shepard, 319 F. 2d 194, 138 USPQ 148 (CCPA 1963)**. Skill in the art is presumed. **In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985)**. Every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein. **In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977)**. Furthermore, artisans must be presumed to know something about the art apart from what the references disclose. **In re Jacoby, 309 F. 2d 513, 135 USPQ 317 (CCPA 1962)**. The conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or

suggestion in a particular reference. **In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969).**

Regarding the applicant's concern regarding the claimed subject matter of claims 1 and 27, i.e., Lee teaches a method/system for creating, delivering, reassembling, rendering, and storing asynchronous and synchronous multimedia message. Lee integrates video/audio streaming with existing Internet/Intranet email messaging and video/audio conferencing systems. The method taught in Lee enables electronic multimedia messaging on video/audio capture-equipped mobile platform with limited pre-installed software capability or memory footprint. [Lee, Abstract] Thus, Lee clearly teaches an implementation of video email. Page 4 of Lee teaches a Universal Audio/Video Rendering Manager, a Streaming Media Publishing Manager, a Distributing Media Manager, a Video Phone Control Manager and an Unattended Streaming Advertisement Manager. None of these teach the limitations above. Lee is clearly focused on sending video via email, etc.; the examiner respectfully disagrees. The relied upon disclosure and the teachings of the Lee are not limited as concluded by the applicant. Lee discloses the broadly claimed limitations of the applicant concerned claims 1 and 27, i.e., please see the cited portions among other places of the cited art that not only contain the applicant concerned content of the art but also the relied upon limitations. The specification of the application under prosecution at page 32, states, The many features and advantages of the present invention will be apparent to one of average skill in the art. All such features and advantages are intended to be within the scope of the invention as defined by the above specification and the following claims. Further, when reviewing a reference the applicants should remember that not only the specific teachings

of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. **In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968)** and **In re Shepard, 319 F. 2d 194, 138 USPQ 148 (CCPA 1963)**. Skill in the art is presumed. **In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985)**. Every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein. **In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977)**. Furthermore, artisans must be presumed to know something about the art apart from what the references disclose. **In re Jacoby, 309 F. 2d 513, 135 USPQ 317 (CCPA 1962)**. The conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. **In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969)**.

In order to expedite the prosecution of this case, as per the prosecution of this case, please see, first notice of appeal was filed on 1/3/2006, second notice of appeal was filed on 9/19/2007, and considering extended prosecution of this case since the first notice of appeal dated 1/3/2006, the applicant is recommended MPEP 1201 states: Where the differences of opinion concern the denial of patent claims because of prior art or other patentability issues, the questions thereby raised are said to relate to the merits, and appeal procedure within the Office and to the courts has long been provided by statute (35 USC 143). 35 U.S.C. 134 (a) states: An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

***Conclusion***

9. In order to expedite the prosecution of this case, multiple references are used for the rejections to demonstrate that several references disclose the claimed subject matter of the claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is (571) 272-3973. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached at (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Haresh N. Patel/

Primary Examiner, Art Unit 2454

10/23/08